

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2022-096**

November 30, 2022

VIA ELECTRONIC MAIL

Mr. Martin Austermuhle

RE: FOIA Appeal 2022-096

Dear Mr. Austermuhle:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 (“DC FOIA”), on the grounds that the Executive Office of the Mayor (“EOM”) constructively denied your DC FOIA requests for public records.

On November 22, 2021, you submitted a DC FOIA request seeking “a list of all contracts and their values that were granted as part of the COVID Vaccine program east of the river in FY21 and FY22 [and] copies of all the contracts and any available sub-contracts.” On November 23, 2021, you submitted a DC FOIA request seeking invoices and other documents related to specific vendor payments EOM made.

On March 1, 2022, having received no response from EOM, you filed a consolidated appeal with this Office challenging EOM’s constructive denial of your requests. On March 8, 2022, we notified EOM of your appeal and requested a response. On March 14, 2022, EOM responded. In its response, EOM stated that it fulfilled your request for contracts by contacting you on March 7, 2022, and “providing information about where the information is publicly available and offering to answer any additional questions [you] had.” EOM also stated that the agency “has received an unprecedented number of FOIA requests which has caused a delay in processing those requests” and it is still processing your request for invoices.¹

Under D.C. Official Code § 2-532(e), a constructive denial occurs when an agency fails to respond within the timing requirements established in D.C. Official Code §§ 2-532(c) and (d). This Office has no authority to extend the maximum deadline for responding to a DC FOIA request, which is 25 business days. D.C. Official Code § 2-532. Based on the record before us, we conclude that EOM has constructively denied your requests because it did not respond within the statutory time period. However, because EOM has now responded to your request for contracts, we dismiss as moot that portion of your appeal. We remand in part to EOM and direct it to promptly conduct a search for invoices and other documents related to the specified vendor payments and disclose to you any non-exempt portions of responsive records.

¹ A copy of the agency’s response to your appeal is attached to this decision.

This constitutes the final decision of this Office. However, you are free to challenge any substantive response you receive from EOM by separate appeal to this Office. If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with DC FOIA.

Sincerely,

Mayor's Office of Legal Counsel

cc: Tenette Smith, Associate General Counsel, EOM (via email)